

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

STEFANIE MARVIN, et al., on behalf of)
themselves and all others similarly situated,)
)
Plaintiffs,)
)
v.) Case No. 2:21-cv-01146-PP
)
KIA AMERICA, INC., et al.,) Hon. Pamela Pepper
)
Defendants.)
)

DEFENDANTS KIA AMERICA, INC. AND HYUNDAI MOTOR AMERICA'S
MOTION TO DISMISS

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Defendants Kia America, Inc. and Hyundai Motor America (together, “Defendants”) respectfully move this Court, pursuant to Federal Rules of Civil Procedure 9(b), 12(b)(1), and 12(b)(6), for an order dismissing Plaintiffs Stefanie Marvin, Katherine Wargin, Chaid Przybelski, Chad Just, Amy Flasch, and Lydia Davis’s (collectively, “Plaintiffs”) Amended Complaint (Dkt. 12) with prejudice and without leave to amend.

Plaintiffs’ Amended Complaint fails to state a claim under Federal Rule of Civil Procedure 12(b)(6). In particular, Plaintiffs cannot hold Defendants accountable for a third-party criminal’s actions; Defendants’ express warranties explicitly disclaim responsibility for damage due to theft; Defendants have not breached any implied warranty of merchantability because their vehicles are fit for their ordinary purpose; Defendants fail to identify an actionable misrepresentation; and Defendants’ claims under state law are preempted by federal regulation and are precluded by the economic loss doctrine and by the very statutes Plaintiffs allege Defendants violated. Plaintiffs also fail to state their fraud-based claims with particularity under Federal Rule of Civil Procedure 9(b). And, under Federal Rule of Civil Procedure 12(b)(1), Plaintiffs lack standing to assert claims on behalf of owners and/or lessees of vehicle makes, models, and years that they themselves have not owned or leased.

This Motion to Dismiss is based on this Motion, the accompanying Memorandum of Law, any reply or supplemental briefing, the record in this case, and such other additional information or argument as may be presented at or before a hearing on this Motion.

For the above reasons and all of the reasons set forth in the accompanying Memorandum, Defendants respectfully request that the Court grant this Motion and dismiss Plaintiffs’ Amended Complaint in its entirety.

Dated: December 22, 2021

Respectfully submitted,

/s/ Michael T. Brody

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